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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,555	08/17/2001	Gregg Henderson	01A1 Henderson	4003
25547	7590	04/20/2004	EXAMINER	
PATENT DEPARTMENT TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P P.O. BOX 2471 BATON ROUGE, LA 70821-2471			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

**Application No.**

09/932,555

**Applicant(s)**

HENDERSON ET AL.

**Examiner**

Alton N. Pryor

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

- I. Duplicate Claim Warning regarding claims 11 and 12 under 37 C FR 1.75 will not be maintained in light of amendment filed 8/17/03. Claims 11 and 12 have been cancelled.
- II. Rejection of claims 11-20 under 35 USC 102(e) as being anticipated by Chen will not be maintained in light of amendment filed 8/17/03. Claims 11-20 have been cancelled.
- III. Rejection of claims 11,12,16,18 under 35 USC 102(b) as being anticipated by Maistrello will not be maintained in light of amendment filed 8/17/03. Claims 11,12,16,18 have been cancelled.
- IV. Rejection of claims 19 and 20 under 35 USC 103(a) as being obvious over Maistrello will not be maintained in light of amendment filed 8/17/03. Claims 19 and 20 have been cancelled.
- V. Obviousness-type Double Patenting Rejection over copending Application 09856760 with respect to claims 11-20 will not be maintained in light of amendment filed 8/17/03. Claims 11-20 have been cancelled.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4-6,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Zobitne et al (US 6548085; 4/15/03). Zobitne teaches a method of applying grapefruit oil to the pavement to kill ants. See abstract, Figure 24. Instant specification paragraph 13 explains that grapefruit oil comprises Nootkatone.

Claims 1,4,7,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Zobitne et al (US 6548085, 4/15/03). Zobitne teaches a method of applying grapefruit oil to the pavement to kill ants. See abstract, Figure 24. Nakatsu et al (US 5965518; 10/12/99) points out that grapefruit oil comprises credene. See column 4 Table 1, column 3 line 38.

Claims 1,3-7,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Mullen (US 6270753; 8/7/01). Mullen teaches a method of applying grapefruit oil to paper to repel ants. See column 3 lines 13-20. In specification paragraph 13 explains that grapefruit oil comprises Nootkatone. Nakatsu et al (US 5965518; 10/12/99) points out that grapefruit oil comprises credene. See column 4 Table 1, column 3 line 38.

### **New Grounds of Rejection**

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zobitne as applied to claims 1,3-7,10 above. See Zobitne's 35 USC 102(b) rejection above.

Zobitne teaches all that is recited in claim 2 except for the instant invention comprising fire ants. However, it would have been obvious to one having ordinary skill in the art to apply grapefruit oil to a fire ant. One would have been motivated to do this since fire ant is a species in the ant genus.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mullen as applied to claims 1,4-7,10 above. Mullen teaches all that is recited in claim 2 except for the instant invention comprising fire ants. However, it would have been obvious to one having ordinary skill in the art to apply grapefruit oil to a fire ant. One would have been motivated to do this since fire ant is a species in the ant genus.

#### ***Telephonic Inquiry***

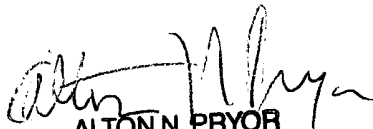
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
ALTON N. PRYOR  
PRIMARY EXAMINER  
Primary Examiner  
AU 1616